

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff-Respondent,	§	
	§	
v.	§	CIVIL ACTION NO. H-11-0636
	§	CRIMINAL ACTION NO. H-09-0311
ROGER LYNN NOBLE,	§	
	§	
Defendant-Movant.	§	

**ORDER ADOPTING THE PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW, AND THE RECOMMENDATION OF THE MAGISTRATE JUDGE**

This case was referred to the Magistrate Judge for an evidentiary hearing on Movant Roger Lynn Noble's claim that his counsel was ineffective for failing to file a direct appeal. An evidentiary hearing was held before the Magistrate Judge on November 16, 2011. The Court has received from the Magistrate Judge Proposed Findings of Fact and Conclusions of Law, and Recommendation that All Relief be Denied on Noble's § 2255 Motion to Vacate, Set Aside or Correct Sentence. Noble has filed objections to the Magistrate's Proposed Findings of Fact and Conclusions of Law and Recommendation (Document No. 75 in Criminal Action No. H-09-0311). The Court, after careful review of Noble's Objections, and having made a *de novo* examination of Noble's claim and all testimony and documentary evidence received at the evidentiary hearing, is of the opinion that the findings of the Magistrate Judge are supported by a preponderance of the evidence

and that such findings and the recommendations of the Magistrate Judge should be and hereby are accepted by the Court in their entirety; and Noble's Objections (Document No. 75) are OVERRULED. Accordingly,

It is ORDERED and ADJUDGED for the reasons set forth in the Magistrate Judge's Proposed Findings of Fact and Conclusions of Law, and Recommendation that All Relief be Denied on Movant's § 2255 Motion to Vacate, Set Aside or Correct Sentence, filed on November 30, 2011, which is adopted in its entirety as the opinion of this Court, that all relief on Movant Roger Lynn Noble's § 2255 Motion to Vacate, Set Aside or Correct Sentence (Document No. 45) is DENIED. It is further

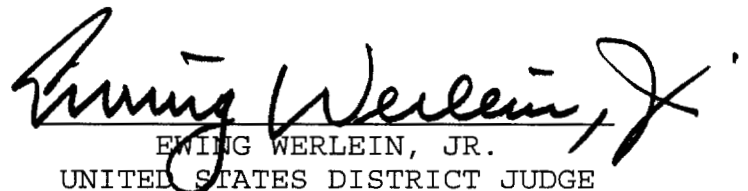
ORDERED that a Certificate of Appealability is DENIED. A certificate of appealability from a habeas corpus proceeding will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 120 S. Ct. 1595, 1603-1604 (2000) (internal quotations and citations omitted). Stated differently, where the claims have been dismissed on the merits, the petitioner "must demonstrate that reasonable jurists would find the district court's assessment of

the constitutional claims debatable or wrong." Id. at 1604; Beazley v. Johnson, 242 F.3d 248, 263 (5th Cir.), cert. denied, 122 S. Ct. 329 (2001). When the claims have been dismissed on procedural grounds, the petitioner must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 120 S. Ct. at 1604. A district court may deny a certificate of appealability *sua sponte*, without requiring further briefing or argument. Alexander v. Johnson, 211 F.3d 895, 898 (5th Cir. 2000).

For the reasons set forth in the Proposed Findings of Fact and Conclusions of Law and Recommendation that All Relief be Denied on Noble's § 2255 Motion to Vacate, Set Aside or Correct Sentence, the Court determines that reasonable jurists would not find debatable the correctness of the findings and conclusions contained therein.

The Clerk will enter this Order and send copies to all parties of record.

Signed at Houston, Texas on this 9th day of April, 2012.


EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE